

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

LARRY JEROME KEITH,

Plaintiff,

vs.

LT. RODNEY WHITEHEAD, et al.,

Defendants.

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5:04-CV-143 (DF)

ORDER

This order is in reference to the Report and Recommendation that United States Magistrate Judge Claude W. Hicks, Jr. entered in this case on August 30, 2005 (doc. 39). Magistrate Judge Hicks recommended that this Court deny Defendant Lester Peek's Motion to Dismiss (doc. 33) because Plaintiff's claim against Defendant Peek required "further factual development." (Recomm., doc. 39, at 2.) Defendant Peek filed a timely objection to the Recommendation (doc. 41).

Plaintiff is an inmate in the custody of the State of Georgia. Plaintiff initiated this § 1983 action against Defendant Peek and others, alleging Defendants violated his Eighth Amendment rights by refusing to give him his pain medication.

Specifically, Plaintiff claims that Defendant Peek, as Chairman of the Butts County Board of Commissioners, failed to protect Plaintiff's Eighth Amendment rights once Plaintiff informed Defendant Peek that he was being denied his medication.

Defendant Peek argues that Plaintiff's case against him should be dismissed because Sheriff Gene Pope is "charged with administering the jail" and "the Board of Commissioners, much less a single Commissioner, do [sic] not possess any authority over the sheriff or his deputies." (Objection, doc. 41, at 2.) The Court has reviewed and carefully considered Defendant's objections to the Magistrate Judge's Recommendation, but concludes that these objections do not warrant rejection or modification of the Magistrate Judge's findings. At this point, it is not clear that Plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Further factual development regarding Defendant Peek's individual authority (if any) as Chairman of the Board of Commissioners to procure medical treatment for county inmates is required. (See Sheriff Pope Ltr., doc. 1, at 32.)

Accordingly, Defendant Peek's Motion to Dismiss is hereby **DENIED**.

SO ORDERED, this 4th day of January, 2006.

/s/ Duross Fitzpatrick
DUROSS FITZPATRICK, JUDGE
UNITED STATES DISTRICT COURT

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